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Stephen Kozmeniuk  
7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION  
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11 BOSKO KANTE, p/k/a BOSKO  
KANTE, an individual,

12 Plaintiff,

13 v.  
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15 DUA LIPA, an individual; STEPHEN  
KOZMENIUK p/k/a KOZ, an  
individual; WARNER MUSIC  
16 GROUP, CORP., a Delaware  
corporation; and DOES 1 through 10,  
17 inclusive,

18 Defendants.  
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CASE NO. 2:23-cv-06186-HDV (PDx)

Honorable Hernán D. Vera

**DEFENDANT STEPHEN  
KOZMENIUK'S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
COMPLAINT**

1 Defendant Stephen Kozmeniuk p/k/a Koz (“Kozmeniuk”), by his  
 2 undersigned counsel, answers the complaint dated July 31, 2023 (the “Complaint”)  
 3 (Doc. No. 1) of plaintiff Bosko Kante p/k/a Bosko Kante (“Plaintiff”) as follows:

4 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF PARTIES**

5 *[sic]*<sup>1</sup>

6 1. Kozmeniuk lacks knowledge or information sufficient to form a belief  
 7 as to the truth of the allegations set forth in Paragraph 1 of the Complaint, and on  
 8 that basis, denies said allegations.

9 2. Kozmeniuk lacks knowledge or information sufficient to form a belief  
 10 as to the truth of the allegations set forth in Paragraph 2 of the Complaint, and on  
 11 that basis, denies said allegations.

12 3. Kozmeniuk denies the allegations set forth in Paragraph 3 of the  
 13 Complaint, and on that basis, denies said allegations.

14 4. Kozmeniuk lacks knowledge or information sufficient to form a belief  
 15 as to the truth of the allegations set forth in Paragraph 4 of the Complaint, and on  
 16 that basis, denies said allegations.

17 5. Paragraph 5 of the Complaint asserts a legal conclusion to which no  
 18 response is required. To the extent a response is required, Kozmeniuk lacks  
 19 knowledge or information sufficient to form a belief as to the truth of the  
 20 allegations set forth in Paragraph 5 of the Complaint, and on that basis, denies said  
 21 allegations.

22 6. Paragraph 6 of the Complaint asserts a legal conclusion to which no  
 23 response is required. To the extent a response is required, Kozmeniuk lacks  
 24 knowledge or information sufficient to form a belief as to the truth of the  
 25 allegations set forth in Paragraph 6 of the Complaint, and on that basis, denies said  
 26 allegations.

27 <sup>1</sup> The headings used in the Complaint are included herein for ease of reference  
 28 only. To the extent such headings constitute allegations to which a response is  
 required, such allegations are denied.

7. Kozmeniuk lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 7 of the Complaint, and on that basis, denies said allegations.

8. Paragraph 8 of the Complaint asserts a legal conclusion to which no response is required. To the extent a response is required, Kozmeniuk denies said allegations.

### **JURISDICTION AND VENUE**

9. Paragraph 9 of the Complaint asserts a legal conclusion to which no response is required. To the extent a response is required, Kozmeniuk denies said allegations.

10. Paragraph 10 of the Complaint asserts a legal conclusion to which no response is required. To the extent a response is required, Kozmeniuk denies said allegations.

11. Paragraph 11 of the Complaint asserts a legal conclusion to which no response is required. To the extent a response is required, Kozmeniuk denies said allegations.

### **FACTUAL ALLEGATIONS**

12. Kozmeniuk lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 12 of the Complaint, and on that basis, denies said allegations.

13. Kozmeniuk lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 13 of the Complaint, and on that basis, denies said allegations.

14. Kozmeniuk lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 14 of the Complaint, and on that basis, denies said allegations.

15. Kozmeniuk admits that he contacted Plaintiff in 2019 regarding potentially contributing material to be considered for possible use in connection

1 with a musical recording titled “Levitating,” states that the communications  
2 between Kozmeniuk and Plaintiff speak for themselves, and otherwise denies the  
3 allegations set forth in Paragraph 15 of the Complaint.

4 16. Kozmeniuk lacks knowledge or information sufficient to form a belief  
5 as to the truth of the allegations set forth in Paragraph 16 of the Complaint, and on  
6 that basis, denies said allegations.

7 17. Kozmeniuk denies the allegations set forth in Paragraph 17 of the  
8 Complaint.

9 18. Kozmeniuk denies the allegations set forth in Paragraph 18 of the  
10 Complaint.

11 19. Kozmeniuk admits that Plaintiff agreed that Plaintiff’s purported  
12 contributions could be used in connection with the musical recording titled  
13 “Levitating,” and otherwise denies the allegations set forth in Paragraph 19 of the  
14 Complaint.

15 20. Kozmeniuk lacks knowledge or information sufficient to form a belief  
16 as to the truth of the allegations set forth in Paragraph 20 of the Complaint, and on  
17 that basis, denies said allegations.

18 21. Kozmeniuk denies the allegations set forth in Paragraph 21 of the  
19 Complaint.

20 22. Kozmeniuk lacks knowledge or information sufficient to form a belief  
21 as to the truth of the allegations set forth in Paragraph 22 of the Complaint, and on  
22 that basis, denies said allegations.

23 23. Kozmeniuk denies the allegations set forth in Paragraph 23 of the  
24 Complaint.

25 24. Kozmeniuk lacks knowledge or information sufficient to form a belief  
26 as to the truth of the allegations set forth in Paragraph 24 of the Complaint, and on  
27 that basis, denies said allegations.

1           25.   Kozmeniuk lacks knowledge or information sufficient to form a belief  
2 as to the truth of the allegations set forth in Paragraph 25 of the Complaint, and on  
3 that basis, denies said allegations.

4           26.   Kozmeniuk lacks knowledge or information sufficient to form a belief  
5 as to the truth of the allegations set forth in Paragraph 26 of the Complaint, and on  
6 that basis, denies said allegations.

7           27.   Kozmeniuk lacks knowledge or information sufficient to form a belief  
8 as to the truth of the allegations set forth in Paragraph 27 of the Complaint, and on  
9 that basis, denies said allegations.

10          28.   Kozmeniuk lacks knowledge or information sufficient to form a belief  
11 as to the truth of the allegations set forth in Paragraph 28 of the Complaint, and on  
12 that basis, denies said allegations.

13          29.   Kozmeniuk lacks knowledge or information sufficient to form a belief  
14 as to the truth of the allegations set forth in Paragraph 29 of the Complaint, and on  
15 that basis, denies said allegations.

16          30.   Kozmeniuk lacks knowledge or information sufficient to form a belief  
17 as to the truth of the allegations set forth in Paragraph 30 of the Complaint, and on  
18 that basis, denies said allegations.

19          31.   Kozmeniuk lacks knowledge or information sufficient to form a belief  
20 as to the truth of the allegations set forth in Paragraph 31 of the Complaint, and on  
21 that basis, denies said allegations.

22          32.   Kozmeniuk denies the allegations set forth in Paragraph 32 of the  
23 Complaint.

24          33.   Kozmeniuk denies the allegations set forth in Paragraph 33 of the  
25 Complaint.

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**FIRST CLAIM FOR RELIEF**

(For Copyright Infringement of Composition – Against All Defendants)

34. Kozmeniuk adopts and incorporates by reference herein its responses to the allegations set forth in Paragraphs 1 through 33 of the Complaint.

35. Paragraph 35 of the Complaint asserts a legal conclusion to which no response is required. To the extent a response is required, Kozmeniuk lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 35 of the Complaint, and on that basis, denies said allegations. Kozmeniuk further avers that the contents of Exhibit A to the Complaint speak for themselves, and that Kozmeniuk otherwise lacks knowledge or information sufficient to form a belief as to the truth of the contents of Exhibit A to the Complaint, and on that basis, denies any allegations arising therefrom.

36. Paragraph 36 of the Complaint asserts a legal conclusion to which no response is required. To the extent a response is required, Kozmeniuk lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 36 of the Complaint, and on that basis, denies said allegations. Kozmeniuk further avers that the contents of Exhibit B to the Complaint speak for themselves, and that Kozmeniuk otherwise lacks knowledge or information sufficient to form a belief as to the truth of the contents of Exhibit B to the Complaint, and on that basis, denies any allegations arising therefrom.

37. Kozmeniuk denies the allegations set forth in Paragraph 37 of the Complaint.

38. Kozmeniuk denies the allegations set forth in Paragraph 38 of the Complaint.

39. Paragraph 39 of the Complaint asserts a legal conclusion to which no response is required. To the extent a response is required, Kozmeniuk denies said allegations.







1           58. Paragraph 58 of the Complaint asserts a legal conclusion to which no  
2 response is required. To the extent a response is required, Kozmeniuk denies said  
3 allegations.

4                                   **PRAYER FOR RELIEF**

5           Kozmeniuk denies that Plaintiff is entitled to the relief requested in the  
6 Complaint or to any other relief whatsoever.

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8                                   **AFFIRMATIVE AND OTHER DEFENSES**

9           Without waiving or excusing Plaintiff's burden of proof, or admitting that  
10 Kozmeniuk has any burden of proof, Kozmeniuk asserts the following affirmative  
11 and other defenses. Kozmeniuk does not presently know all of the facts and  
12 circumstances with respect to Plaintiff's allegations, and thereby reserves the right  
13 to amend this answer should it later discover facts demonstrating the existence of  
14 additional defenses.

15                                   **FIRST DEFENSE**

16                                   (Insufficient Service of Process)

17           The Complaint should be dismissed as against Kozmeniuk based on  
18 improper service of process.

19                                   **SECOND DEFENSE**

20                                   (Lack of Personal Jurisdiction)

21           The Complaint should be dismissed as against Kozmeniuk because this  
22 Court lacks personal jurisdiction over Kozmeniuk.

23                                   **THIRD DEFENSE**

24                                   (Improper Venue)

25           This action should be dismissed as being filed in the improper venue.

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**FOURTH DEFENSE**

(Failure to State a Claim)

The Complaint and any purported claims for relief therein fail to state a claim upon which relief can be granted.

**FIFTH DEFENSE**

(Lack of Volitional Conduct)

Plaintiff's copyright infringement claim is barred for failure to show volitional conduct by Kozmeniuk that would implicate any rights under 17 U.S.C. § 106.

**SIXTH DEFENSE**

(Good Faith/Innocent Infringement)

The Complaint and any purported claims for relief therein are barred in whole or in part because, to the extent it acted at all, Kozmeniuk acted in good faith and had no reason to believe that any alleged acts constituted infringement. To the extent Plaintiff's claims are not entirely barred by Kozmeniuk's good faith, any damages, which Kozmeniuk expressly denies, are limited by Kozmeniuk's innocent intent.

**SEVENTH DEFENSE**

(Lack of Originality/Protectability)

The material that Plaintiff alleges has been infringed, and each element thereof, is not original and/or does not constitute protectable and copyrightable subject matter.

**EIGHTH DEFENSE**

(Lack of Registration)

The Complaint and any purported claims for relief therein are barred to the extent they are based on the alleged infringement of material that is not subject to a valid and enforceable copyright registration.

**NINTH DEFENSE**

(Fraud on the Copyright Office)

The Complaint and any purported claims for relief therein are barred to the extent that Plaintiff knowingly included material inaccuracies on the application for the relevant copyright registrations, such that the registrations are invalid pursuant to 17 U.S.C. § 411(b).

**TENTH DEFENSE**

(Copyright Misuse)

The Complaint and any purported claims for relief therein are barred, in whole or in part, by the doctrine of copyright misuse.

**ELEVENTH DEFENSE**

(Failure to Timely Register)

Plaintiff's claims for statutory damages and/or attorneys' fees are barred by 17 U.S.C. § 412 for failure to timely register the claimed works.

**TWELFTH DEFENSE**

(Waiver)

The Complaint and any claims therein are barred, precluded, and/or limited by the doctrine of waiver.

**THIRTEENTH DEFENSE**

(Estoppel)

The Complaint and any claims therein are barred, precluded, and/or limited by the doctrine of estoppel.

**FOURTEENTH DEFENSE**

(Acquiescence/Consent)

The Complaint and any claims therein are barred, precluded, and/or limited by the doctrines of acquiescence and consent.

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1 **FIFTEENTH DEFENSE**

2 (License)

3 The Complaint and any claims therein are barred, precluded, and/or limited  
4 by the doctrines of express and/or implied license.

5 **SIXTEENTH DEFENSE**

6 (Fair Use)

7 The Complaint and any purported claims for relief therein are barred,  
8 precluded, and/or limited to the extent any alleged use of Plaintiff's allegedly  
9 copyrightable material constitutes fair use.

10 **SEVENTEENTH DEFENSE**

11 (*De Minimis* Use)

12 The Complaint and any purported claims for relief therein are barred,  
13 precluded, and/or limited to the extent the alleged use of any of the material at  
14 issue constitutes *de minimis* use.

15 **EIGHTEENTH DEFENSE**

16 (Failure to Mitigate)

17 Plaintiff did not incur any damages. To the extent Plaintiff did incur any  
18 damages, which Kozmeniuk expressly denies, Plaintiff failed to mitigate his  
19 damages.

20 **NINETEENTH DEFENSE**

21 (Unclean Hands)

22 Plaintiff has not come to the Court with clean hands, and thus, the Complaint  
23 and any purported claims for relief therein are barred, in whole or in part, by the  
24 doctrine of unclean hands.

25 **TWENTIETH DEFENSE**

26 (Adequate Remedy at Law)

27 Plaintiff's requests for injunctive relief are barred because Plaintiff has an  
28 adequate remedy at law.

**TWENTY-FIRST DEFENSE**

(Laches)

Plaintiff's requests for injunctive relief are barred by the doctrine of laches.

**TWENTY-SECOND DEFENSE**

(Statute of Limitations)

The Complaint and any purported claims for relief therein are barred, precluded, and/or limited by the applicable statute of limitations.

**TWENTY-THIRD DEFENSE**

(Lack of Subject Matter Jurisdiction)

The Complaint and any purported claims for relief therein fail because Plaintiff does not allege any case or controversy.

Kozmeniuk reserves the right to assert any other such affirmative defenses in the event that further investigation and discovery indicates that they are proper.

WHEREFORE, Kozmeniuk respectfully submits that the Complaint should be dismissed with prejudice and judgment entered in its favor, and that Kozmeniuk be awarded its reasonable attorneys' fees and costs incurred in the defense of this action pursuant to 17 U.S.C. § 505.

DATED: October 23, 2023

MITCHELL SILBERBERG & KNUPP LLP

By: /s/ David A. Steinberg  
David A. Steinberg  
Bradley J. Mullins  
Attorneys for Defendant Warner Music  
Group Corp. and Stephen Kozmeniuk

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**DEMAND FOR JURY TRIAL**

Kozmeniuk demands a trial by jury of all of Plaintiff’s claims that are so triable.

DATED: October 23, 2023                      MITCHELL SILBERBERG & KNUPP LLP

By: /s/ David A. Steinberg  
David A. Steinberg  
Bradley J. Mullins  
Attorneys for Defendant Warner Music  
Group Corp. and Stephen Kozmeniuk